

co-worker, employee, student, or supervisee, whether or not such individual is in a subordinate position to the licensee.

"Spouse" means either the person to whom the licensee is married or an individual in a long-term, committed relationship with the licensee.

(c) A licensee shall not engage in sexual contact with a patient with whom the licensee has knowledge of having a patient-pharmacist relationship. The patient-pharmacist relationship is considered ongoing for purposes of this section unless: actively terminated, by way of written notice to the patient, and a minimum of 30 days have passed from the rendition of the last pharmaceutical service; or the last pharmaceutical service was rendered more than six months ago. The licensee shall retain documentation of written notice of termination of the patient-pharmacist relationship.

(d) A licensee shall not seek or solicit sexual contact with a patient with whom the licensee has knowledge of having a patient-pharmacist relationship and shall not seek or solicit sexual contact with any person in exchange for pharmaceutical services.

(e) A licensee shall not engage in any discussion of an intimate sexual nature with a patient with whom the licensee has knowledge of having a patient-pharmacist relationship, unless that discussion is related to legitimate patient needs. Such permissible discussion shall not include disclosure by the licensee of the licensee's own intimate sexual relationships or interests.

(f) A licensee shall provide conditions that prevent the exposure of the unclothed body of the patient unless necessary to the pharmaceutical services rendered.

(g) A licensee shall not engage in sexual harassment, whether in a professional setting, including, but not limited to, a pharmacy, or elsewhere.

(h) A licensee shall not engage in any other activity (such as, but not limited to, voyeurism or exposure of the genitalia of the licensee) that would lead a reasonable person to believe that the activity serves the licensee's personal prurient interests or is for the sexual arousal, the sexual gratification, or the sexual abuse of the licensee or patient.

(i) Violation of any of the prohibitions or directives set forth at (c) through (h) above shall constitute professional misconduct pursuant to N.J.S.A. 45:1-21 e.

(j) Nothing in this section shall be construed to prevent a licensee from rendering pharmaceutical services to a spouse, provided that the rendering of such services is consistent with accepted standards of pharmacy care.

(k) It shall not be a defense to any action pursuant to this section that:

1. The patient solicited or consented to sexual contact with the licensee;

or

2. The licensee was in love with or had affection for the patient.

(l) A licensee shall report to the Board any incident or series of incidents that the licensee believes in good faith to be in violation of this section.

Submit written comments by June 6, 2025, to:

Natalie Mintchwarner
Administrative Practice Officer
New Jersey Department of Transportation
PO Box 600
Trenton, NJ 08625-0600
Fax: (609) 530-4638
Submit electronically at NJDOTRules@dot.nj.gov.

This rule may be viewed or downloaded from the Department of Transportation's (Department) website at: www.nj.gov/transportation/about/rules/proposals.shtm.

The agency proposal follows:

Summary

This chapter governs utilities, including pipelines, overhead power and communications lines, and underground electric power and communications lines. The chapter sets forth standards and requirements for utility accommodation on Department of Transportation (Department) rights-of-way. The State of New Jersey is heavily industrialized, densely populated, and described as a "corridor State." The State strives to provide a safe and modern highway system for its citizens, visitors, and travelers, while at the same time, ensuring that safe and adequate utility services are provided to its citizens and industries. In addition to carrying out their own improvement and expansion programs to meet ever-increasing customer demands, utilities must also modify their facilities to conform to highway construction projects. Rarely, can either the Department or the utility companies construct or alter their respective facilities without somehow impacting the other. Through this chapter on utility accommodation, the Department established rules to control and coordinate the use of highway rights-of-way and the procedures to be used in achieving this control.

On December 3, 2021, the Federal Highway Administration (FHWA) enacted a Broadband Infrastructure Deployment rule, 23 CFR Part 645, Subpart C, pursuant to 47 U.S.C. § 1504 and the MOBILE NOW Act. Pursuant to the new rules, states are to identify a broadband utility coordinator to facilitate broadband infrastructure in the state's right-of-way, establish a registration process for broadband infrastructure entities, and send annual notification to registered broadband infrastructure entities of transportation improvement projects that use Federal funds. FHWA can withhold or take away Federal funds for transportation improvement projects if states are non-compliant. The Department is adopting and incorporating 23 CFR Part 645, Subpart C.

The Department is incorporating by reference 2 CFR 200.216, prohibiting certain telecommunications and surveillance services or equipment.

This notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5, as the Department has provided a 60-day comment period for this notice of proposal.

The proposed amendments are as follows:

N.J.A.C. 16:25-1.2(a) is proposed for amendment to include reference to specific services. New N.J.A.C. 16:25-1.2(c) is proposed to establish prohibitions pursuant to Federal and State authority.

Pursuant to 23 CFR Part 645, Subpart C, definitions found at N.J.A.C. 16:25-2.1 have been proposed for amendment. New definitions are also proposed for inclusion. "Cable television company" or "CATV company" is amended to clarify language by citing specific services. "Pavement structure" is amended to reference as-built pavement layers. "Utility" is amended to clarify language by citing specific services. "Utility agreement" is amended to clarify language by citing specific services. The following definitions are added: "Broadband infrastructure," "Broadband infrastructure entity," and "Statewide Transportation Improvement Program" or "STIP."

N.J.A.C. 16:25-5.3 is recodified as N.J.A.C. 16:25-5.3(a). New N.J.A.C. 16:25-5.3(b), (c), and (d) are proposed as new to incorporate Federal language pursuant to 23 CFR Part 645, Subpart C.

N.J.A.C. 16:25-7.3(f) is proposed for amendment to delete unnecessary language, add the correct term, and correct a Department standard title.

N.J.A.C. 16:25-8.9(b)3 is proposed for amendment to include reference to pavement.

N.J.A.C. 16:25-9.2(f) is proposed for amendment to include reference to broadband.

TRANSPORTATION

(a)

CAPITAL PROGRAM MANAGEMENT

Utility Accommodation

Proposed Amendments: N.J.A.C. 16:25-1.2, 2.1, 5.3, 7.3, 8.9, 9.2, 9.9, and 13.2

Authorized By: Francis K. O'Connor, Commissioner, Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-19, 40:62-35, 40:62-134, 48:2-80 et seq., 48:5A-1, 48:7-1 et seq., 48:7-2 et seq., 48:9-17, 48:9-25.4, 48:13-10, 48:17-8, 48:17-16, and 48:19-17; 47 U.S.C. § 1504; and 2 CFR 200.216 and 23 CFR Part 645, Subparts A through C.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2025-031.

N.J.A.C. 16:25-9.9(b)3 is proposed for amendment to include reference to pavement.

N.J.A.C. 16:25-13.2(b)5 is proposed for amendment to include reference to pavement type and condition.

Social Impact

The proposed amendments regulate the location, design, and method of installation and maintenance of utilities on State highway rights-of-way. The proposed amendments will have a positive social impact in that they maintain public safety along the highways by ensuring that proper procedures are used when utilities are installed along State highways in New Jersey. The proposed amendments also have a positive social impact in that they facilitate the installation and maintenance of critical public utilities, which are essential for the social and economic well-being of New Jersey's residents and businesses.

Economic Impact

The proposed amendments will continue to have a beneficial economic impact on the public as they allow the safe and efficient movement of people and goods on the State highway system.

The Department and the utilities both incur direct and indirect costs for personnel, mileage, and equipment requirements associated with the installation, maintenance, and relocation of utilities. Utility companies also incur costs in obtaining applicable permits and in the preparation and implementation of the traffic control plans required at N.J.A.C. 16:41, Highway Occupancy Permits, which refers to N.J.A.C. 16:25, Utility Accommodation, for information regarding the methods for installing and relocating utilities. They are also responsible for all costs of restoration and/or repairs to public highway property disturbed or damaged as a result of utility occupancy of highway rights-of-way property. These costs vary, depending upon the type of work done and the site conditions. Each site is unique, so there is no average or range that meaningfully reflects these costs. The applicable fees include those for applications and permits as required at N.J.A.C. 16:41. The cost of repairs varies based upon the amount of material required to restore the disturbed or damaged property. Utility companies are required pursuant to N.J.S.A. 48:2-80 et seq., to provide location verification for their facilities and are responsible for the costs associated with providing location verification for their facilities within the State's right-of-way for proposed Department projects. Utilities will not be reimbursed for providing the Department or its consultants with information on all tenants jointly occupying their utility facility. As the utility company maintains that information for its own purposes, the Department does not consider providing that information as a reimbursable expense.

Federal Standards Statement

A Federal standards analysis pursuant to P.L. 1995, c. 65, is not required because the Department has determined that the requirements of this rulemaking are either dictated pursuant to State statutes or are the same as the Federal requirements and standards set forth at 49 CFR Parts 192, 193, and 195 and 23 CFR Part 645, Subparts A, B, and C.

Jobs Impact

The proposed amendments will have no effect on jobs in New Jersey, as the Department does not expect that the rules proposed for amendment will result in the generation or loss of jobs.

Agriculture Industry Impact

The proposed amendments will have no impact on the agriculture industry in New Jersey. This chapter is not intended to regulate farming, crop, or animal production.

Regulatory Flexibility Statement

Some applicants may be small businesses, as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. As the proposed amendments do not impose any reporting, recordkeeping, or compliance requirements on businesses of any size, the Department has made no provision for lesser or differing standards for small businesses.

Permit applicants are required to provide specified information with respect to each type of permit application and are required to pay applicable fees. The Department has made no provision for lesser or differing standards for small businesses because it has determined that the rules proposed for amendment are the minimum necessary to preserve

safe and efficient mobility on the State highways. The Department does not believe that any utility companies meet the definition of small business.

Permit applicants may need to retain the services of professionals, such as licensed professional engineers, planners, attorneys, and surveyors, to assist in the preparation of applications and plans, to conduct traffic studies, and in the processing of appeals. The actual costs of compliance with permit requirements cannot be estimated and will vary for each applicant, based upon the scope of the improvement or development being planned along the State highway.

Housing Affordability Impact Analysis

The proposed amendments govern utilities, including pipelines, overhead power and communications lines, and underground electric power and communications lines. The chapter sets forth standards and requirements for utility accommodation on Department rights-of-way. The existing rules have had no impact on the affordability of housing in New Jersey or on the average costs of housing and the Department believes that it is extremely unlikely that the proposed amendments would bring about a change in the average costs associated with housing.

Smart Growth Development Impact Analysis

The proposed amendments will have no impact on smart growth. The Department believes that it is extremely unlikely that the proposed amendments would bring about a change in housing production in Planning Areas 1 or 2, or within designated centers, pursuant to the State Development and Redevelopment Plan because the proposed amendments and new rules outline the standards and procedures applicable to utility accommodation on State highway rights-of-way pursuant to the jurisdiction or control of the New Jersey Department of Transportation.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The proposed amendments govern utilities, including pipelines, overhead power and communications lines, and underground electric power and communications lines. The chapter sets forth standards and requirements for utility accommodation on Department rights-of-way. The amendments and new rules have no impact on racial and ethnic community criminal justice and public safety in New Jersey and the Department believes that it is extremely unlikely that the amendments will have any impact on pretrial detention, sentencing, probation, or parole policies concerning adults or juveniles in the State. Therefore, no further analysis is required.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. PURPOSE, SCOPE, STANDARDS, AND CONTACT INFORMATION

16:25-1.2 Scope

(a) All utility facilities approved [under] **pursuant to** highway occupancy permits, pursuant to N.J.A.C. 16:41 or by utility agreements issued pursuant to this chapter, are subject to the requirements of this chapter. Public utilities and cable television companies subject to this chapter are owners of underground, surface, or overhead facilities, either singularly or in combination[s]. The utilities include, but are not limited to, electric, telephone, sewer, water, gas facilities, [and] cable, **voice, data, video, and graphic** services. Requests for permits or agreements by private utilities will be treated as special cases pursuant to N.J.A.C. 16:25-5.1.

(b) (No change)

(c) **Certain telecommunications and video surveillance services or equipment is prohibited as listed at 2 CFR 200.216 and as required in Department Specifications 106.01 and 106.03.**

SUBCHAPTER 2. DEFINITIONS

16:25-2.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

...

“Broadband infrastructure” means any buried, underground, or aerial facility, and any wireless or wireline connection, that enables users to send and receive voice, data, video, graphics, or any combination thereof.

“Broadband infrastructure entity” means any entity that installs, owns, or operates broadband infrastructure and provides broadband services in a manner consistent with the public interest, convenience, and necessity, as determined by the State.

“Cable television company” or “CATV company” means any person or group of persons who provides cable, voice, data, video, graphic services over a cable, broadband system, or both, and directly or through one or more affiliates owns a significant interest in such cable, broadband, or both systems; or who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable, broadband, or both systems.

“Pavement structure” means the combination of all as-built pavement layers, subbase, base course, and the surface course placed on a subgrade to support the traffic load and distribute it to the roadbed.

“Statewide Transportation Improvement Program (STIP)” means a staged, multi-year, Statewide intermodal program of transportation projects, consistent with the Statewide transportation plan and planning processes, as well as metropolitan plans, transportation improvement programs (TIPs), and planning processes.

“Utility” means a privately, publicly, or cooperatively owned facility for producing, transmitting, or distributing communications, cable television, broadband, voice, data, video, and graphics, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, stormwater not connected with highway drainage, or any other similar commodity, including any fire or police signal system or street lighting system, that directly or indirectly serves the public. The term “utility” shall also mean the utility owner or the utility company inclusive of any wholly owned or controlled subsidiary. The term “utility” or “utilities” when used in this chapter is intended to reference both public and private utilities unless otherwise individually specified.

“Utility agreement” means the document by which the Department enters into an agreement with a public utility, a private utility, a cable television company, broadband, voice, data, video, and graphic companies, a utility not covered [by] at N.J.S.A. Title 48, or a utility having compensable property rights for the installation, removal, and/or relocation of its facilities. The utility agreement further serves as the permit to occupy the highway right-of-way and specifies the requirements for, and the conditions of, said occupancy.

SUBCHAPTER 5. SPECIAL PERMITS AND AGREEMENTS

16:25-5.3 Local Federal-Aid Road agreements

(a) Pursuant to 23 CFR Part 645, Subpart B, the Department will enter into necessary agreements with the appropriate local public agency to regulate the use and occupancy of Federal-Aid Roads, and to assist local officials in establishing utility accommodation policies conforming, as appropriate for the type of highway involved, to the provisions of this chapter.

(b) Pursuant to 23 CFR Part 645, Subpart C, the Department will identify a broadband utility coordinator responsible for facilitating the infrastructure right-of-way efforts within the State; establish a website registration process for broadband infrastructure entities; notify registered broadband infrastructure entities of the Statewide Transportation Improvement Program (STIP) on an annual basis; coordinate initiatives pursuant to 47 U.S.C. § 1504 with other Statewide telecommunication and broadband plans, State and local transportation and land use plans, and include strategies to minimize repeated excavations that involve broadband infrastructure installation in the right-of-way.

(c) If the Department chooses to provide for the installation of broadband infrastructure in the right-of-way of an applicable Federal-aid highway project pursuant to this section, the Department will carry out appropriate measures to ensure that any existing broadband infrastructure entities are not disadvantaged, as compared to new broadband infrastructure entities seeking to occupy the right-of-way.

(d) Consistent with 47 U.S.C. § 1504 and pursuant to 23 CFR Part 645, Subpart C, the Department is not required to install or allow the installation of broadband infrastructure in a highway right-of-way nor is there authority for the Secretary of the U.S. Department of Transportation to withhold or reserve funds or approve a Title 23 project.

SUBCHAPTER 7. FACILITY DESIGN AND LOCATION

16:25-7.3 Safety, construction, and highway restoration provisions

(a)-(c) (No change.)

(f) Restoration of [flexible and composite] the pavement structure by the utility company shall be in accordance with the Department’s standard details for Utility Trench Construction found in the New Jersey Department of Transportation Standard Roadway Construction/Traffic Control/Bridge Construction Details.

(g)-(l) (No change.)

SUBCHAPTER 8. PIPELINES

16:25-8.9 Adjustment of existing pipelines

(a) (No change.)

(b) The following shall apply when adjusting existing pipelines to accommodate highway construction projects:

1.-2. (No change.)

3. On relocated and new installations, the utility shall be installed at a depth, and of a strength, to permit the excavation and reconstruction of the roadway pavement structure consistent with existing grades or the grades set by the infrastructure project and to allow for the maintenance or replacement of existing or proposed pavement and drainage infrastructure.

4. (No change.)

SUBCHAPTER 9. UNDERGROUND ELECTRIC POWER AND COMMUNICATION LINES

16:25-9.2 Location and alignment

(a)-(e) (No change.)

(f) The minimum lateral proximity to a parallel utility facility, including the State’s fiber optic ducts, shall be 18 inches from the edge of utility facility to the edge of utility facility. Electric power, broadband and communication cables, gas lines, water lines, and sewer lines shall be separated from one another as required by appropriate industry codes. Separation of the utility from highway facilities or other utilities shall allow for reasonable success in locating utilities with electronic devices.

(g)-(k) (No change.)

16:25-9.9 Adjustment of existing underground power and communication lines

(a) (No change.)

(b) The following shall apply when adjusting existing underground electric and communication facilities to accommodate highway construction projects:

1.-2. (No change.)

3. On relocated and new installations, the utility shall be installed at a depth and of a strength to permit the excavation and reconstruction of the roadway pavement structure consistent with existing grades or the grades set by the infrastructure project and to allow for the maintenance and replacement of existing or proposed pavement and drainage infrastructure.

4. (No change.)

TRANSPORTATION

PROPOSALS

SUBCHAPTER 13. WAIVERS

16:25-13.2 Uncased crossings

(a) (No change.)

(b) Factors that shall be considered in the evaluation of an uncased trenchless utility crossing alternative include, but are not limited to, the following:

1.-4. (No change.)

5. Roadway type, **pavement type, and condition;**

6.-11. (No change.)

(c) (No change.)
